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SENSITIVE

Mr. Steven W. Kleinman
Scarinci & Hollenbeck, LLC
P.O. Box 790
Lyndhurst, NJ 07071-0790

RE: MUR 5693
Aronsohn et al.

Dear Mr. Kleinman:

Based on a complaint filed with the Federal Election Commission on May 31, 2005, and information supplied by your clients, Paul Aronsohn and Paul Aronsohn for Congress f/k/a Aronsohn Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as treasurer ("the Committee"), the Commission, on October 26, 2006, found that there was reason to believe that Paul Aronsohn violated 2 U.S.C. § 432(e)(1) and that the Committee violated 2 U.S.C. §§ 433(a) and 434(a)(2).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations of 2 U.S.C. §§ 432(3)(1), 433(a) and 434(a)(2) have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible. The General Counsel's brief and any brief that you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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Please be advised that you have the opportunity to request an oral hearing before the Commission at this stage of the enforcement process. See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed. Reg. 7551 (Feb. 16, 2007). Hearings are voluntary and no adverse inference will be drawn by the Commission based on a respondent's request or waiver of such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission may or may not grant a request for a hearing.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Thomasenia P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)

5)
6 Paul Aronsohn)

MUR 5693

7 Paul Aronsohn for Congress f/k/a)

8 Aronsohn Congressional Exploratory Campaign and)

9 Parisa Sabeti, in her official capacity as treasurer)
10

11 **GENERAL COUNSEL'S BRIEF**
12

13 **I. STATEMENT OF THE CASE**

14 On October 26, 2006, the Federal Election Commission ("Commission") found
15 reason to believe that Paul Aronsohn violated 2 U.S.C. § 432(e)(1) by failing to file a Statement
16 of Candidacy designating his principal campaign committee within fifteen days of becoming a
17 candidate, and that Paul Aronsohn for Congress f/k/a Aronsohn Congressional Exploratory
18 Campaign and Parisa Sabeti, in her official capacity as treasurer ("the Committee") violated
19 2 U.S.C. § 433(a) by failing to file a timely Statement of Organization, and violated 2 U.S.C.
20 § 434(a)(2) by failing to file a 2005 Year-End Report. Based on the following factual and legal
21 analysis, we are prepared to recommend that the Commission find probable cause to believe that
22 Paul Aronsohn violated 2 U.S.C. § 432(e)(1) and that the Committee violated 2 U.S.C.
23 §§ 433(a) and 434(a)(2).

24 **II. STATEMENT OF FACTS**

25 Paul Aronsohn announced his "Congressional Exploratory Campaign" on April 11, 2005.
26 On January 23, 2006, he filed his initial Statement of Candidacy with the Commission.¹

¹ Aronsohn filed an amended Statement of Candidacy on February 23, 2006 to include information detailing whether he intended to expend personal funds in excess of the threshold amount, and if so, what amount.

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1 Subsequently, on February 16, 2006, the Committee filed its initial Statement of Organization.

2 The Committee's first filed report, the 2006 April Quarterly Report, disclosed receipts and
3 disbursements made as early as April 2005, or more than nine months before Aronsohn filed his
4 Statement of Candidacy.

5 Aronsohn drafted an October 27, 2005 solicitation letter that he asserts was sent to
6 individuals in his personal Rolodex and to a limited number of potential supporters whose names
7 were provided to him by friends. The letter, written on Aronsohn "Congressional Exploratory
8 Campaign" letterhead, includes the following relevant statements:

- 9 • Granted, this will be a tough fight. Defeating an incumbent is
10 never easy. But I have the energy, the experience, and the
11 determination to win this race. And as evidenced by the attached
12 news article, I am ready to begin fighting for our future ... now.
13 (Ellipsis in original).²
14
15 • As a member of the Clinton Administration, I spent several years
16 working on national security and international affairs—having served
17 three U.S. Ambassadors to the United Nations: Madeleine Albright,
18 Bill Richardson, and Richard Holbrooke.

19
20 Currently, I work for one of the most respected healthcare companies
21 in the world, Pfizer Inc., where I promote greater access to life enhancing,
22 life saving medicines.

23 Now, I want to take this experience and my passion for public service
24 and put them to work for the people of New Jersey's 5th Congressional
25 District.

26
27

² The "attached news article" is from the September 11, 2005 edition of *The Star Ledger*. It focuses on Representative Garrett's vote against a bill providing money for Hurricane Katrina relief, and his explanation of that vote. It identifies Aronsohn as a "Democratic challenger" to Garrett, and quotes Aronsohn as saying of the vote, "It's outrageous ... It would have been the right thing to send a message to the people in the Gulf Coast that the nation stands behind them in unison. But he lacks the compassion and decency to do that."

- This is a critical moment in our campaign. Every dollar we receive in the next few weeks can help us prepare for this fight against Scott Garrett and will demonstrate to everyone that Democrats are serious about this race—that with an energetic, experienced, moderate Democrat on the ticket, we have what it takes to win! (Emphasis in original).
- We have come a long way in just a few short weeks. And with your support, we can go the distance.

Additionally, on November 1, 2005, the Aronsohn "Congressional Exploratory Campaign" issued a press release. That press release stated, in relevant part:

Well, we've crossed our first major threshold: With more than a year until the election, the campaign has already received about 225 individual contributions and has raised about \$100,000!!!

To put this in perspective, remember ...

- ✓ the last 5th District nominee had only about 150 individual contributions throughout the entire election cycle; and
- ✓ the last 5th District Democratic nominee had \$0 by this time in the last election cycle. (Emphasis in original).

In other words, we are ahead of the curve and moving forward ... fast.

III. LEGAL ANALYSIS

Under the Act, an individual becomes a "candidate" when he or she has received or made in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). However, the Commission's "testing the waters" regulations, 11 C.F.R. §§ 100.72(a) and 100.131(a), exempt from the definitions of "contribution" and "expenditure" funds received solely for the purpose of determining whether an individual should become a candidate. Thus, an individual may raise or spend more than \$5,000 without becoming a candidate if his or her activities are permissible

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1 "testing the waters" activities, which include conducting polls, making telephone calls, and
2 travel.³ *Id.*

3 Nonetheless, the "testing the waters" exemption is no longer available when an individual
4 raises or spends more than \$5,000 and engages in activities indicating that he or she has decided
5 to run for a particular office. *Id.* The Commission's regulations provide examples of activities
6 indicating that an individual has decided to become a candidate, which include, but are not
7 limited to: raising funds in excess of what could reasonably be expected to be used for
8 exploratory activities or activities designed to amass funds to be spent after becoming a
9 candidate; making or authorizing written or oral statements that refer to the individual as a
10 candidate for a particular office; or conducting activities in close proximity to the election or over
11 a protracted period of time. *Id.* These regulations "seek to draw a distinction between activities
12 directed to an evaluation of the feasibility of one's candidacy, as distinguished from conduct
13 signifying that a private decision to become a candidate has been made." Advisory Opinion
14 1981-32.

15 According to the Committee's first filed report—the April 2006 Quarterly Report—
16 Aronsohn had raised \$5,000 by April 19, 2005 and therefore had met the monetary threshold for
17 becoming a candidate within approximately a week of announcing his "exploratory campaign."
18 While relevant, even Aronsohn's announcement that he had raised \$100,000 in funds by
19 November 1, 2005, over six months later, would not necessarily mean by itself that he had

³ The Commission has emphasized the narrow scope of this exemption to the Act's disclosure requirements. See Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992, 9993 (1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . .").

1 crossed into candidate status. See, e.g., MUR 2710 (Judge Harvey Sloane) (raising \$200,000 in
2 funds while testing the waters did not trigger candidate status); MUR 5703 (Martha T. Rainville)
3 (raising \$100,000 in contributions was insufficient to find that candidate was no longer testing
4 the waters). However, Aronsohn crossed the line from exploring a possible campaign into actual
5 candidacy through statements made in his October 27, 2005 solicitation letter indicating that he
6 had decided to run for office by that time.⁴

7 Aronsohn's statements in his October 27, 2005 solicitation letter are similar to those in
8 previous Enforcement matters in which the Commission has determined that the line between
9 testing the waters and candidacy had been crossed. Aronsohn states that although "defeating an
10 incumbent is never easy," he has what it takes to "win the race," and is "ready to begin fighting
11 for our future ...now." That is similar to Pat Robertson's statement in his solicitation letter in
12 MUR 2262 (M.G. (Pat) Robertson) that he had reached his "qualified" decision to seek the
13 Presidential nomination, noting "in response to tens of thousands of people across America ...
14 clapping and shouting, urging me- 'GO FOR IT, Pat! . . . I AM READY TO GO FOR IT.'
15 (Emphasis in original). There, the Commission found reason to believe the respondents had
16 violated the Act based on its determination that Pat Robertson had become a candidate, and was
17 no longer "testing the waters." In MUR 5251 (Friends of Joe Rogers), the Commission
18 concluded that Joe Rogers had become a candidate where the contents of his solicitation letter

⁴ That he has asserted that his letter was sent to individuals in his Rolodex and others who might be "potential supporters," does not contradict that conclusion. In Advisory Opinion 1981-32, in discussing the parameters of the "testing the waters" exemption, the Commission considered a prospective candidate's correspondence to a person who had indicated an interest in his campaign. The Commission indicated that targeting correspondence to that audience tended in the direction of candidacy. According to the Commission, because the reason for corresponding with such a person is "reinforcement of his or her initial indication of political support[,] ... the activity appears less oriented to ascertaining whether there is an initial base of political support adequate to launch a campaign effort, and more oriented to shoring up a base already identified that will sustain an actual campaign effort."

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1 informed readers that due to his close working relationship with the President and the
2 Congressional leadership, "[he] will immediately work for the benefit of Colorado" and "[he]
3 look[s] forward to serving you in the next United States Congress."⁵ That statement resembles
4 the one made by Aronsohn in his letter that he "[n]ow" wants to take his political and business
5 experience and his passion for public service and "put them to work for the people of New
6 Jersey's 5th Congressional District." As with the statements in MURs 2262 and 5251,
7 Aronsohn's letter demonstrates that he is no longer exploring his viability as a candidate, but has
8 decided to run. Moreover, his statements that he has what it takes to "win this race," and with
9 support, "can go the distance," indicate that Aronsohn is no longer focused on whether he should
10 enter the race, but whether he can win it.

11 Finally, Aronsohn states that "[e]very dollar we receive in the next few weeks can help
12 us prepare for this fight against Scott Garrett," the incumbent from an opposing party,
13 thereby showing he has decided to run. This statement is akin to that in MUR 5251, where Joe
14 Rogers requested funds to "jump-start [his] campaign treasury." By indicating that the funds will
15 be used to campaign against a specifically named opponent, Aronsohn effectively communicated

⁵ Joe Rogers' November 2001 fundraising letter made the following statements:

I know that I will effectively serve your interests in Congress and that because of the close working relationship with the President and the leadership of Congress that I will immediately work for the benefit of Colorado. Won't you please fill out the enclosed reply card indicating how you can help my campaign? (Emphasis in original).

[T]he early contributions are what help candidates get organized so they can run the most effective campaigns. That's why I am asking for your help now, nearly a year before the general election. If you would send your check or complete the enclosed credit card donation form within the next day or two, you will help me jump-start my campaign treasury." (emphasis in original).

[T]hank you in advance for your help in this new campaign. With your support I look forward to serving you in the next United States Congress.

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1 that he is committed to the race, not just evaluating the viability of his candidacy. Further, this
2 statement indicates his intention to amass campaign funds to spend after he becomes a candidate,
3 an example that the regulations cite as indicative that an individual has decided to become a
4 candidate. See 11 C.F.R. § 100.72(b)(2).

5 The Committee's November 1, 2005 press release, comparing the number of contributors
6 with those of the last Democratic nominee, reinforces the conclusion that Aronsohn had decided
7 to run for Federal office by the date of his October 27, 2005 letter. By stating that with more
8 than a year before the general election, his campaign had already received more individual
9 contributions than the last democratic nominee had received to date and during the entire election
10 cycle, and that "we are ahead of the curve and moving forward...fast," Aronsohn indicates not
11 only that he is already a more viable contender than the prior nominee, but that he is raising
12 funds for the election, not simply to assess the potential strength of his financial base.

13 In sum, Aronsohn's October 27, 2005 solicitation letter indicates that by that date he had
14 decided to run for office. Since he had raised in excess of \$5,000 by then, he was a "candidate"
15 pursuant to 2 U.S.C. § 431(1). Achieving "candidate" status triggers registration and reporting
16 requirements for the candidate and his principal campaign committee. Within 15 days of
17 becoming a candidate, the individual must file a Statement of Candidacy with the Commission
18 that designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); see also
19 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization
20 no later than ten days after it has been designated by the candidate, 2 U.S.C. § 433(a). All
21 reportable amounts from the beginning of the "testing the waters" period must be filed with the
22 first financial disclosure report filed by such committee, even if the amounts were received or
23 expended prior to the current reporting period. See 11 C.F.R. §§ 104.3(a) and (b). Thus,

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Aronsohn should have filed his Statement of Candidacy within 15 days of October 27, 2005, or by November 11, 2005, designating his principal campaign committee. Thereafter, within ten days, or by November 21, 2005, the Committee should have filed its Statement of Organization. Had these filings been timely, the Committee's first required report would have been the 2005 Year End Report, due on January 31, 2006, rather than the 2006 April Quarterly Report.

Accordingly, we are prepared to recommend that the Commission find probable cause to believe that Paul Aronsohn violated 2 U.S.C. § 432(e)(1) and that Paul Aronsohn for Congress f/k/a Aronsohn Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2).

IV. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that Paul Aronsohn violated 2 U.S.C. § 432(e)(1).
2. Find probable cause to believe that that the Paul Aronsohn for Congress f/k/a Aronsohn Congressional Exploratory Campaign and Parisa Sabeti, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2).

May 16, 2007
Date

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